

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION            )  
FOR BENEFICIAL WATER USE PERMIT            )  
NO. 42727-s76H BY LARRY MEYER AND        )  
MARY HOOVER-MEYER                            )

FINAL ORDER

\* \* \* \* \*

The time period for filing exceptions or objections to the Proposal for Decision of May 24, 1984 has expired. One letter has been received from Bernie and Elizabeth Swift, indicating their concurrence with the Proposal for Decision. Therefore, the Department of Natural Resources and Conservation hereby accepts and adopts the Proposal for Decision, its Findings of Fact and Conclusions of Law, as its Final Order, and expressly incorporates said Proposal for Decision by reference herein.

WHEREFORE, based upon the record of proceedings herein, the Department hereby issues the following:

FINAL ORDER

Subject to the terms, conditions, restrictions and limitations below, Application for Beneficial Water Use Permit No. 42727-s76H is hereby granted to Larry Meyer and Mary Hoover-Meyer to appropriate from Willoughby Creek 10 gallons per minute, up to .03 acre-feet per annum for instream stockwater use for two animal units. The point of use and diversion is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, Township 8 North, Range 19 West, Ravalli County, Montana.

**CASE # 42727**

This Provisional Permit is expressly made subject to the following conditions, limitations, and restrictions.


1. Water appropriated pursuant to this Permit shall be for instream stockwater use only; no diversions by means of impoundments, pump, headgate, dam, or pipe, shall be made.

2. Water appropriated pursuant to this Permit shall not exceed (10) ten gallons per minute, up to .03 acre-feet per annum for two animal units.

3. This Permit is issued subject to existing rights in the source of supply, and any final determination of those rights as Provided by Montana Law.

4. The issuance of this Permit by the Department shall not reduce the Permittee's liability for damages caused by Permittee's exercise of this Permit, nor does the Department in issuing the Permit in any way acknowledge liability for damage caused by the Permittee's exercise of this Permit.

DONE this 7<sup>th</sup> day of September 1984.

  
\_\_\_\_\_  
Gary Fritz, Administrator  
Department of Natural  
Resources and Conservation  
32 S. Ewing, Helena, MT  
(406) 444 - 6605

#### NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

**CASE # 42727<sup>2</sup>**

AFFIDAVIT OF SERVICE

STATE OF MONTANA )  
 ) ss.  
County of Lewis & Clark )

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on September 10, 1984, she deposited in the United States mail, certified mail, an order by the Department on the Application by Larry Meyer and Mary Hoover-Meyer, Application No. 42727-s76H, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Larry & Mary Meyer, Drawer L, Stevensville, MT 59870
2. Bernie & Elizabeth Swift, SE 206 Rose Lane, Hamilton, MT 59840
3. Grant & Anna Lipelt, Rt 2 Box 90, Stevensville, MT 59870
4. Zack Bugli, Rt 3, 3293 Bugli Lane, Stevensville, MT 59870
5. Caroline Davis, 808 S Sunset Bench Road, Stevensville, MT 59870
6. Bitterroot Irrigation District, & Eleanor Wolfe, P.O. Box 151, Hamilton, MT 59840
7. Dave Pengelly, Missoula Field Office, (inter-department mail)
8. Sarah A. Bond, Hearing Examiner, (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION

by Donna K. Elser

STATE OF MONTANA )  
 ) ss.  
County of Lewis & Clark )

On this 10<sup>th</sup> day of September, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Dudley Kohn  
Notary Public for the State of Montana  
Residing at Montana City, Montana  
My Commission expires 3-1-85

CASE # 42727

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*


|                                   |   |                  |
|-----------------------------------|---|------------------|
| IN THE MATTER OF THE APPLICATION  | ) |                  |
| FOR BENEFICIAL WATER USE PERMIT   | ) |                  |
| NO. 42727-s76H BY LARRY MEYER AND | ) | CLARIFICATION OF |
| MARY HOOVER MEYER                 | ) | PROPOSAL         |

\* \* \* \* \*

To all parties in the above-captioned action:

Due to printer error, the final page of the Proposal for Decision was incompletely printed out. Enclosed please find the complete final page of the Proposal for Decision. Please substitute this page for the final page you have received. Thank you.

DONE this 24<sup>th</sup> day of May, 1984.

  
\_\_\_\_\_  
Sarah A. Bond, Hearing Examiner  
Department of Natural Resources  
and Conservation  
32 S. Ewing, Helena, MT 59620  
(406) 444 - 6625

**CASE # 42727**

received by the Department of Natural Resources and Conservation on or before twenty-days after service of this Proposal. The Final Order will be made only after careful review and consideration of all comments or objections filed by the parties herein.

AFFIDAVIT OF SERVICE

STATE OF MONTANA )  
 ) ss.  
County of Lewis & Clark )

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on May 24, 1984, she deposited in the United States mail, First class mail, an order by the Department on the Application by Larry Meyer and Mary Hoover-Meyer, Application No. 42727-s76H, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Larry & Mary Meyer, Drawer L, Stevensville, MT 59870
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8. Sarah A. Bond, Hearing Examiner, (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION

by Donna K. Elser

STATE OF MONTANA )  
 ) ss.  
County of Lewis & Clark )

On this 24<sup>th</sup> day of May, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

June P. Gilman  
Notary Public for the State of Montana  
Residing at Helena, Montana  
My Commission expires 1-21-1987

CASE # 42727

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION       )  
FOR BENEFICIAL WATER USE PERMIT       ) PROPOSAL FOR DECISION  
NO. 42727-s76H BY LARRY MEYER AND       )  
MARY HOOVER MEYER                        )

\* \* \* \* \*

Pursuant to the Montana Water Use Act, and the Montana Administrative Procedures Act, the above captioned matter was noticed for hearing. See, Notice of Hearing and Appointment of a Hearing Examiner, October 26, 1983. Due to settlement negotiations among the parties, however, the objections were withdrawn and the hearing cancelled. Minor differences existed with regard to whether the permit conditions (upon which the withdrawal of objections were based) should refer to water "diverted" or to water "used", or "utilized". The Department notes that the permit conditions expressly preclude actual diversion by the Permittee, other than the diversion by the stockwatering directly from the stream. Thus, the Objectors' intent that their withdrawal of objections be predicated on this limitation have been fully satisfied. And, the permit conditions to which the Applicant has asserted have not been changed.

Based upon the record herein, the Hearing Examiner makes the following proposed:

**CASE # 42727**

### FINDINGS OF FACT

1. On March 24, 1982 at 9:36 a.m., the Applicant filed an Application for Beneficial Water Use Permit seeking 60 gallons per minute (hereafter, "gpm") up to .75 acre-feet per year: 40 gpm up to .5 acre-feet for irrigation of 25 acres, between April 15 and October 15 of each year: and 20 gpm up to 25 acre-feet for livestock watering, between March 1 and December 31 of each year from Willoughby Creek. The proposed place of use is .25 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, Township 8 North, Range 19 West, Ravalli County, Montana. The place of use for the stockwater use is the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, Township 8 North, Range 19 West, Ravalli County, Montana. The diversion points for the irrigation use are adjacent to the place of use; the legal description being the same. The diversion point for the stockwater use is the same as the place of use.

2. Applicant proposed essentially, to irrigate a family garden for his own use, and to appropriate water for his own livestock.

3. On July 21, 1982, Bernie A. and Elizabeth F. Swift timely filed an objection to the instant application, complaining and alleging generally that the source, Willoughby Creek is already over-appropriated, i.e., that no unappropriated waters exist in the source, and that issuance of the permit as applied for would cause adverse affect to prior appropriators from Willoughby Creek. Mr. & Mrs. Swift attached documents to their objection evidencing their various claimed water rights in



Willoughby Creek and Gooseneck Branch of Willoughby Creek.

4. On August 2, 1982, Grant and Anna Lipelt timely filed an objection complaining and alleging generally that no unappropriated water exists in Willoughby Creek, and that further appropriations therefrom would work adverse affect to their prior appropriative rights for irrigation use from the Creek.

5. On August 2, 1982, Zack Bugli (leesee)(sic) timely filed an objection to the instant application complaining and alleging generally that no unappropriated water exists in Willoughby Creek.

6. On August 2, 1982, Caroline Hare Davis timely filed an objection substantially similar to that of Mr. Bugli.

7. Mr. Bugli is listed as the person submitting the Statement of Claims of Existing Water Rights for Stockwater to the Water Courts of the State of Montana (hereafter, SB 76 Claim) for Ms. Davis (attached to her objection). Further, from the similarity in handwriting, Mr. Bugli appears to have filled out Ms. Davis' objection form. Mr. Bugli is a lessee of Ms. Davis' and is objecting on the basis of his leasehold interest in her water rights. Therefore, these two objectors will be considered as represented by Mr. Bugli. (Telephone conversation with Department of Natural Resources and Conservation (hereafter, "Department", or "DNRC") Missoula Water Rights Bureau Field Office Area Supervisor, Dave Pengelly.)

8. On October 26, 1983, a Notice of Hearing and Appointment of Hearing Examiner for the above-captioned matter was served on all parties.

9. On January 3, 1984, based upon withdrawals of objections by all parties and the Applicant's acceptance of permit conditions, the Hearing Examiner cancelled the hearing.

10. All parties have agreed that the statutory criteria exist for issuance of the permit with specific conditions attached, basically, that the Applicant may not divert water from Willoughby Creek for any use, but may only allow their stock to water directly from the Creek.

11. The statutory criteria for issuance of the permit, as conditioned, are stipulated to exist: there are unappropriated waters in the source of supply, at times when the water can be put to the use proposed by the Applicant; in the amount the Applicant seeks to appropriate and throughout the period during which the Applicant seeks to appropriate, the amount requested is available; the water rights of a prior appropriator will not be adversely affected, the proposed means of diversion, construction and operation of the appropriator works are adequate; the proposed use of water is a beneficial use; and, the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

Based upon the foregoing Proposed Findings of Fact, and the record of the case, the Hearing Examiner hereby makes the following Proposed:

### CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter and the parties herein.

2. The Department gave proper notice of the application and of the hearing, and all relevant substantive and procedural requirements of law or rule have been met, therefore, the matter was properly before the Hearing Examiner.

3. Based upon the withdrawals of objections by all parties, the Application for Permit is uncontested.

4. The parties, by withdrawing their objections, and the Department, implicitly stipulate to the existence of all statutory criteria requisite for permit issuance. No evidence was presented on the record.

WHEREFORE, Based upon the Findings of Fact and Conclusions of Law and upon the documents on record herein, the Hearing Examiner makes the following:

### PROPOSED ORDER

Subject to the terms, conditions, restrictions and limitations below, Application for Beneficial Water Use Permit No. 42727-s76H is hereby granted to Larry Meyer and Mary Hoover-Meyer to appropriate from Willoughby Creek 10 gallons per minute, up to .03 acre-feet per annum for instream stockwater use for two animal units. The point of use and diversion is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, Township 8 North, Range 19 West, Ravalli county, Montana.

This Provisional Permit is expressly made subject to the following conditions, limitations, and restrictions.

1. Water appropriated pursuant to this Permit shall be for instream stockwater use only; no diversions by means of impoundments, pump, headgate, dam, or pipe, shall be made.

2. Water appropriated pursuant to this permit shall not exceed (10) ten gallons per minute, up to .03 acre-feet per annum for two animal units.

3. This Permit is issued subject to existing rights in the source of supply, and any final determination of those rights as provided by Montana Law.

4. The issuance of this permit by the Department shall not reduce the Permittee's liability for damages caused by Permittee's exercise of this permit, nor does the Department in issuing the permit in any way acknowledge liability for damage caused by the Permittee's exercise of this permit.

DONE this 21<sup>st</sup> day of May, 1984.

Sarah A. Bond  
Sarah A. Bond, Hearing Examiner  
Department of Natural Resources  
and Conservation  
32 S. Ewing, Helena, MT 59620  
(406) 444 - 6625

NOTICE

This Proposal for Decision is offered for the review and comment of all parties of record. It is a recommendation, not a final decision. Objections and exceptions must be filed with and

received by the Department of Natural Resources and Conservation  
on or before twenty-days after service of this Proposal. The  
Final Order will be made only after careful review and

**CASE # 42727.**

AFFIDAVIT OF SERVICE

STATE OF MONTANA )  
 ) ss.  
County of Lewis & Clark )

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on May 21, 1984, she deposited in the United States mail, Certified mail, an order by the Department on the Application by Larry Meyer and Mary Hoover-Meyer, Application No. 42727-s76H, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

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2. Bernie & Elizabeth Swift, SE 206 Rose Lane, Hamilton, MT 59840
3. Grant & Anna Lipelt, Rt 2 Box 90, Stevensville, MT 59870
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7. Dave Pengelly, Missoula Field Office, (inter-department mail)
8. Sarah A. Bond, Hearing Examiner, (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION

by Donna K. Elser

STATE OF MONTANA )  
 ) ss.  
County of Lewis & Clark )

On this 21st day of May, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Judy Lohr  
Notary Public for the State of Montana  
Residing at Montana City, Montana  
My Commission expires 3-1-85

CASE # 42727